

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
	)	
v.	)	Case No. 1406019036
	)	
MICHAEL CRONAUER,	)	
Defendant	)	
	)	

Submitted: November 7, 2014

Decided: November 27, 2014

Zoe Plerhoples, Deputy Attorney General  
Delaware Department of Justice  
820 North French Street  
Wilmington, DE 19801  
*Attorney for the State*

Thomas A. Foley, Esq.  
1905 Delaware Avenue  
Wilmington, DE 19806  
*Attorney for the Defendant*

**AMENDED ORDER ON DEFENDANT'S MOTION**

**TO TERMINATE PROBATION**

**MCDONOUGH, COMMISSIONER**

## PROCEDURAL BACKGROUND

On October 1, 2014, the Court denied the Defendant's motion to terminate probation, but did approve, in the alternative, the Defendant's request to reduce the level of probation supervision from Level 2 to Level 1.<sup>1</sup> The State, represented by the Department of Justice, did not oppose the defendant's motion, and in fact, noted that it "joined" in the motion. On October 10, 2014, Defense Counsel informed the Court and the Department of Justice that the State Probation office (Probation), "insists that all probationers for DV cases be supervised on Level II at a minimum".<sup>2</sup> This was the first notice the Court received of this Probation policy for Domestic Violence (DV) cases. The Court asked Probation for its position on the risk of recidivating by Mr. Cronaeur, and in particular, as to the risk to the safety of his wife, the victim in this domestic violence case. Probation Supervisor Willoughby indicated that:

My concern in reviewing this case is he was originally charged with 2 Felonies (Aggravated Menacing and Possession of a Deadly Weapon During the Commission of a Felony) and 2 Misdemeanors (Offensive Touching and Terroristic Threatening). The police report alleges long term unreported domestic violence against the victim. In addition, it describes Mr. Cronauer as being drunk at the time, a knife being used, threats to harm the victim (wife), all while dragging the victim through the residence by her hair. In speaking with PO Frank and reviewing her notes, Mr. Cronauer falls into the typical DV behavior of wanting to downplay everything that happened, how he should not be on probation and voices how he does not want to follow the rules. This is a very big concern.<sup>3</sup>

On October 14, 2014, the Court issued a *revised* Order, reinstating the Level 2 Probation, and indicating that a hearing on the Defendant's Motion would be scheduled.<sup>4</sup> The hearing was held on October 22, 2014. The Defense submitted a supplemental letter from the victim, Mrs. Cronauer, on October 24, 2014, and Probation responded to supplemental questions from the Court, with the final response received on November 7, 2014.

---

<sup>1</sup> Exhibit A, Order to Reduce Probation Level to Level 1, dated October 1, 2014

<sup>2</sup> E-mail, dated October 10, 2014, from Thomas Foley, Esq, Defense Counsel

<sup>3</sup> E-mail, dated October 14, 2014, from Officer Robert Willoughby, Probation Supervisor

<sup>4</sup> Exhibit B, Order Reinstating Probation Level 2

## FACTUAL BACKGROUND

The Defendant, Michael Cronauer, was charged with Aggravated Menacing, Possession of a Deadly Weapon During the Commission of a Felony, Terroristic Threatening and Offensive Touching in the context of a DV incident involving his wife on June 23, 2014. Nine days later, at the preliminary hearing calendar on July 2, 2014, the Defendant entered a guilty plea to the misdemeanor charge of Offensive Touching. As reflected on the Guilty Plea Form, the State recommended the following sentence: “PBJ; 1 yr II; discharge upon completion of Domestic Violence Counselling; No unlawful contact with Joy Cronauer; continue substance abuse counselling & AA”. Also reflected on the Guilty Plea Form, the Defendant responded “No” to the question, “Has anyone promised you what your sentence will be?”<sup>5</sup>

The Court is not bound by the State’s recommended sentence, and followed it, in part, but departed from it in other respects. Based on the fact that the Defendant had no prior criminal history, the Court did impose a Probation Before Judgment (PBJ) sentence at Level 2 (monthly reporting), as the State recommended. The sentence also included the following treatment conditions: substance abuse and mental health evaluations and follow any recommended treatment along with continued AA meetings. Domestic Violence Counselling, of course, was part of the sentence, but the sentence did *not* follow the recommendation of discharge of probation supervision upon completion of the DV counselling. Nor did the sentence follow the State’s recommendation of “No Unlawful Contact” with the victim, but rather imposed an order of “No Contact with Joy Cronauer except for phone, e-mail & text communications”.<sup>6</sup>

Thus, the Court’s sentence in this DV case departed from the State’s recommended sentence in two respects, 1) the No Contact Order, and 2) declining to discharge probation

---

<sup>5</sup> Exhibit C, Guilty Plea Form, dated 7/2/14 & signed by the Defendant, his attorney and the State DAG

<sup>6</sup> Exhibit D, Sentencing Order, dated 7/2/14

supervision upon completion of the DV course. Among the factors considered by the Court at the time of sentencing were the following:

- The committing Magistrate had written the following notes on the Bail And Disposition Sheet: “Victim Safety, Seriousness & Nature of Offenses” and of particular note, “High Lethality Assessment”;<sup>7</sup>
- The New Castle County Police Arraignment Form indicated a number of risk factors for victim safety, including: “Defendant has used or threatened to use a weapon”; “Defendant uses alcohol”; “Increase in frequency or severity of violence”; and “Defendant threatens to kill”.<sup>8</sup>

Based on concern for victim safety, and given that this DV sentencing occurred just nine days after the incident, the Court found that it was too early to accommodate the Defendant’s wish for a “No Unlawful Contact” order with his wife so that he could return to live at the family home. However, the Court also noted on the sentencing order that a status hearing would be held in 6 weeks in connection with the No Contact Order. The purpose of the status hearing was to re-evaluate the safety risk to the victim at that juncture, and determine whether to modify the No Contact Order to No Unlawful Contact.

The 6 week-status hearing was not needed. Prior to that time, the Defendant filed a Motion to Modify his Sentence/Review Commissioner’s Order, which was granted. The Order, dated July 16, 2014, indicated: “that the State and Defendant have requested a no unlawful contact order. It is granted with zero tolerance for any unlawful contact, adverse contact”.<sup>9</sup>

Fast forward three months from the original sentencing, and the Defendant filed a Motion to Terminate Probation, or in the alternative, have probation reduced to Level 1. Defendant’s

---

<sup>7</sup> Exhibit E, Justice of the Peace Court Bail and Disposition Sheet for Michael Cronauer

<sup>8</sup> Exhibit F, New Castle County Division of Police Arraignment Form

<sup>9</sup> Exhibit G, Order dated July 16, 2014

Motion included the following reasons: he had completed the DV course; Probation had determined he did not need further mental health or substance abuse treatment; he had been sober for over 90 days (as of the Motion, dated 9/23/14) and was active in AA; and that his wife and children had moved to Georgia.

As noted in the Procedural Background section, the Court denied the Motion to Terminate Probation on October 1, 2014. Given that this is a PBJ case, granting the motion to terminate probation would have resulted in the dismissal of the DV charge – after only three months of probation at the time. However, the Court did grant the Defendant’s request to reduce the level of probation supervision from Level 2 to Level 1 for the reasons noted in its Order (attached as Exhibit A). The State did not oppose the Defendant’s Motion, and in fact, indicated that it “joined” it.

As it turned out, the State’s position did not encompass the perspective of State Probation, the agency that has supervised the Defendant on this DV probation. We have belatedly learned that State Probation has a general policy that DV cases cannot be supervised at a lower level than Level 2, and cannot be reviewed for early termination of probation until at least six months’ time. Additionally, in response to the Court’s inquiry regarding the risk of recidivating by Mr. Cronauer, the Supervisor of the Probation Officer who actually supervised Mr. Cronauer for the first three months’ of this probation, expressed specific concerns about this Defendant. (Excerpt of Supervisor’s e-mail quoted in the Procedural Background section, FN 3).

Based on this newly disclosed information, the Court issued a *revised* Order, dated October 14, 2014, reinstating Probation Level 2 and indicating that a hearing would be held. This is the decision based on the October 22, 2014 hearing along with supplemental information provided by the Defense and Probation.

## ANALYSIS

At the hearing, Mr. Cronauer's Probation Officer, Ms. Frank,<sup>10</sup> who had supervised his probation up to that time, along with Ms. Frank's supervisor, Mr. Willoughby, took the position that the Defendant's probation should not be terminated at this time. Their position is based on both the general DV policies of the Probation agency as well as reasons specific to Mr. Cronauer. Probation's policies regarding DV cases include: 1) no supervision below Level 2 (monthly reporting); and 2) no opportunity for review for early termination of DV probation before six months' time, at the earliest.

Probation's concerns specific to Mr. Cronauer included those previously indicated by Officer Willoughby in his October 14, 2014 e-mail quoted in the Procedural Background section. Of particular note is Probation's assessment that "Mr. Cronauer falls into the typical DV behavior of wanting to downplay everything that happened, how he should not be on probation and voices how he does not want to follow the rules. This is a very big concern."

DAG Plerhoples expressed the position that she has an obligation to honor her prior agreement with the defense that she would recommend that Mr. Cronauer's probation be terminated upon completion of the DV course. She had agreed to that recommendation as part of the plea negotiations, and indicated that she needs to keep her agreement. She also noted that she had agreed to that sentencing recommendation after speaking with the victim, Mrs. Cronauer.

The Defense took the position that it is appropriate to terminate Mr. Cronauer's probation early for the following reasons: he had completed the DV course; he had maintained sobriety and continued with AA; and that his family needs him to live with them in Georgia where his wife and four children had already moved.

---

<sup>10</sup> Probation Supervisor Willoughby indicated that Officer Frank was taking another assignment, effective 10/20/14, and that Mr. Cronauer's case would be transferred to Officer Fanelli for future supervision.

The Defense further expressed the position that Mr. Cronauer is not interested in the transfer of his probation to Georgia. As previously explained in an e-mail from his attorney, Mr. Foley, Mr. Cronauer, “wouldn’t want to have his name in yet another law enforcement database, above and beyond subjecting his family and kids to probation officers in the household”.<sup>11</sup> The Defense also pointed to a cumbersome process involved in the Interstate Compact transfer of supervision process.

This decision is a difficult one for the Court, especially given the fact that the Defendant’s wife, Mrs. Cronauer, and their four children now live in Georgia, 14 hours away, and that Mrs. Cronauer, the victim in this DV case, is also requesting that her husband’s probation be terminated early so that he can rejoin the family. Mrs. Cronauer’s letters are compelling, and have been seriously considered by the Court.<sup>12</sup>

The Court is also mindful of the fact, however, that the Defendant, in effect, created this hardship situation, namely, his separation from his family, that he now wants the Court to resolve by ending his probation early. He and his family made the decision that Mrs. Cronauer and their children would move from Delaware to Georgia *before* the Defendant’s one-year term of Delaware probation was completed. In fact, his Motion to Terminate Probation was filed just shy of the three-month mark of this probation term. And, while, the State had, indeed, recommended that the Defendant’s probation end after he completed the DV course, that is *not* the sentence that the Court imposed for Mr. Cronauer. Frankly, the decision to move the rest of his family to Georgia early in his Delaware probation term, appears to presume that the Defendant would get his way. It is consistent with Probation’s assessment about Mr. Cronauer that he felt “...he should not be on probation and voices how he does not want to follow the

---

<sup>11</sup> E-mail, dated October 10, 2014, from Thomas Foley, Esq., Defense Counsel

<sup>12</sup> Exhibits H and I, Letters from Mrs. Joy Cronauer, DV victim/wife of Defendant

rules.”<sup>13</sup> Mr. Cronauer was able to live with his family in Delaware, and had he waited for his Delaware probation to be over before his wife and children moved to Georgia, the family would still be together now.

Further, Mr. Cronauer still has an available option to pursue in order to rejoin his family in Georgia, namely, to request the transfer of his probation supervision to that State. While the transfer process may be cumbersome, if approved, the goal of living with his family again would be achieved. One of the reasons provided for Mr. Cronauer’s reluctance to transfer his probation to Georgia is potentially troubling, especially in the context of a DV probation. It was said that Mr. Cronauer does like the idea of “subjecting his family and kids to probation officers in the household”. One of the hallmarks of domestic violence is control of the victim. Mr. Cronauer’s wish that probation officers not have access to his wife and children during the time that he is serving a domestic violence probation, at least, raises potential concerns.

The bottom line is victim safety in determining whether a DV probation should be terminated early. When the Court first denied the Defendant’s Motion to Terminate Probation, it did approve, in the alternative, a reduced level of supervision from Level 2 to Level 1. The Court trusted that the State’s position, in joining the Defense Motion, also incorporated the position of the Probation Office that is actually supervising Mr. Cronauer’s DV probation. It turns out that this was not the case. As previously noted, Probation opposes the early termination of this DV probation, as well as the reduction of supervision to Level 1, on the grounds that it would violate Probation policies for DV cases, but also, based on specific concerns that Probation holds related to Mr. Cronauer. These concerns, previously discussed, do implicate victim safety, and the Court cannot ignore them.

---

<sup>13</sup> E-mail, dated October 14, 2014, from Officer Robert Willoughby, Probation Supervisor



While it is commendable that Mr. Cronauer has gained and maintained sobriety during his probation term, it is still not quite five months' long at this juncture. Given the specific concerns raised by Probation including the observation that "Mr. Croanuer falls into the typical DV behavior of wanting to downplay everything that happened...", terminating probation early, less than halfway through the probation term, would serve to reinforce that message of minimizing the seriousness of domestic violence. And, in terms of victim safety, terminating probation now would result in no outside supervision. It would also result in the dismissal of the charge which would leave no external motivator hanging over his head to help keep this Defendant on track towards the path of sobriety, and likely, related to it, non-violence.

In Mrs. Cronauer's follow-up letter received after the October 22, 2014 hearing, she makes a statement that was likely intended to reassure the Court, but actually, has the opposite effect. She stated that, "If the court does allow for the charges to be dropped, I firmly believe it would be on MY conscience (not the courts) if Michael does not maintain a path towards recovery and I choose to stay".<sup>14</sup> A "blaming the victim" mentality should not apply in the context of domestic violence. It would not be Mrs. Cronauer's fault if she were to become a victim of domestic violence again, but that seems to be the undercurrent of her comment. The criminal justice system has the responsibility to *try* to protect the DV victim, to the extent possible, and not to minimize the seriousness of this type of criminal conduct or to deflect responsibility onto the victim.

The Court holds concerns for victim safety in this case, and in particular, notes the concerns raised by the Probation Office, which has been supervising Mr. Cronauer in this DV case, concerns which were *not* known at the time of the Court's initial review of the Defendant's Motion, and which need to be given considerable weight.

---

<sup>14</sup> Exhibit I, letter from Mrs. Cronauer to the Court

## CONCLUSION

Based on the above, the **Defendant's Motion to Terminate Probation is DENIED**, and the Court affirms its October 14, 2014 Order to reinstate Mr. Cronauer's **Probation Supervision at Level 2**.

IT IS SO ORDERED:

---

Mary M. McDonough, Commissioner

DATED: November 27, 2014

Zoe Plerhopes, Deputy Attorney General  
Thomas Foley, Esquire  
Probation Officers Robert Willoughby, Sieara Frank,  
Laura Fanelli & Terri Conover  
Clerk of the Court